

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

Crl.Rev.Pet.No. 3223 of 2007()

**CRA.328/2005 of ADDL. SESSIONS COURT (ADHOC), THALASSERY
CC.670/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR**

REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

**P.DIVAKARAN, PANAYAN HOUSE,
AGED 48 YEARS, PURAMBIL KULAM,
CHUNGAM, PAPPINISSERY, KANNUR TALUK,
KANNUR DIST.**

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS: COMPLAINANTS

**1. DINESHAN.P., S/O.KANNAN,
PANNERI HOUSE, AZHIKODE.**

**2. THE STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.

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Cri. R.P. No. 3223 OF 2007
.....

Dated this the 4th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.670/2004 on the file of the J.F.C.M.-II, Kannur challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have

considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. In as much as the revision petitioner is stated to have been in custody since 30.7.2007, the imprisonment already undergone by him shall constitute the sentence besides a direction to pay a sum of Rs.75,000/- (Rupees seventy five thousand only) to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. The said amount of compensation shall be paid within three months from today. The revision petitioner shall be released from custody forthwith unless his continued detention is necessary in connection with any other case against him. Even after his release, his liability to pay the above compensation shall remain, failing which he shall suffer simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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